IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12586 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMNIKLAL NANALAL BHANANI

Versus

DIGUBHA BAHADURSINH VALA

Appearance:

1. Special Civil Application No. 12586 of 2004

MR SUNIL C PATEL for Petitioner No. 1

MR DHARMESH V SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/02/2005

ORAL JUDGEMENT

#. Rule. Mr.D.V.Shah, learned advocate appearing for the respondent waives notice of rule on behalf of the

respondent. At the request of the learned advocates for the parties, the petition is taken up for final disposal today.

#. In the present petition, the petitioner has challenged the award dated 14.06.2002 passed by the Labour Court, Bhavnagar in Reference (LCB) No.386 of 1997 as also the order dated 8.7.2004 passed by the same Court in Misc.Application No. 48 of 2002. It is the case of the petitioner that the award dated 14.06.2002 was passed ex-parte as the petitioner could not remain present nor his representative could appear for valid reasons. Upon coming to know about the passing of the award, the petitioner moved restoration application being Misc.Application no.48 of 2002 before the Labour Court, Bhavnagar. However, the same also came to be rejected by the order dated 08.07.2004.

#. Learned advocate Shri Sunil Patel appearing for the petitioner submits that the Labour Court ought not to have decided the reference ex-parte and at any rate when the petitioner filed application for setting aside the ex-parte award, the same ought to have been granted. He submits that the petitioner had made out valid grounds for allowing the Misc. Application for setting aside the ex-parte award. He, therefore, submits that the impugned award and the order are required to be set aside and the matter may be remanded to the Labour Court for considering on merits. He submits that the question whether the respondent was a workman or not has not been gone into by the Labour Court.

#. In response to the submissions made by the learned advocate for the petitioner, Shri D.V.Shah appearing for the respondent has submitted before me that the impugned orders are just and proper and that the petitioner has not made out any ground for setting aside the ex-parte award. He has also submitted that in any case, the award was passed as far back as in 2002 and the subsequent order of the Labour Court rejecting the Misc.Application of the petitioner was also available in July, 2004. He, therefore, submits that even in case this Court is inclined to allow the petition, suitable conditions may be imposed to safeguard the interest of the workman.

#. Considering the submissions made before me, I am of the opinion that the Labour Court, Bhavnagar ought to have accepted the Misc.Application of the petitioner for setting aside the ex-parte award. The petitioner had stated that one of the trustees of the petitioner Trust who was looking after the matter was ill for a period of

2 to 3 months and that therefore the Management of the Trust had come to a standstill. It was also submitted that thereafter also, there were valid reasons which prevented the petitioner from filing the Misc.Application within time. The Labour Court, therefore, ought to have considered the request for setting aside the ex-parte award liberally and ought to have allowed the Misc.Application No.48 of 2002 filed by the petitioner.

#. Though I am inclined to allow the petition and set aside the order dated 08.07.2004 refusing to set aside the ex-parte award as well as the award itself which is dated 14.06.2002, I am of the opinion that some conditions shall have to be imposed to safeguard the interest of the respondent. Accordingly, the order dated 8.7.2004 passed in Misc.Application No. 48 of 2002 as well as the ex-parte award dated 14.06.2002 are quashed and set aside and the matter is remanded to the Labour Court, Bhavnagar for considering the same afresh. Considering the fact that the petitioner himself was substantially responsible for the state of affairs and the fact that because of his non-appearance, the Labour Court has passed the ex-parte award, I direct the petitioner shall pay an amount of Rs.5,000/- (Rupees five thousand only) by way of cost of the litigation of the respondent. Considering the fact that the award was passed as back as in the year 2002 and the respondent is without any employment, I request the Labour Court, Bhavnagar to take up the reference for urgent consideration and dispose of the same as expeditiously as possible and preferably before 31st May, 2005. Rule is made absolute accordingly. Office is directed to issue writ forthwith.

(SHARAD D DAVE, J)
srilatha